NV Energy, Inc. *and* International Brotherhood of Electrical Workers, Local 396, AFL–CIO, Petitioner. Case 28–UC–000243

January 30, 2015

DECISION ON REVIEW AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

The issue in this case is whether the Regional Director properly clarified the existing unit of the Employer's employees employed in Clark and Nye Counties, Nevada, to include 14 plant operators and maintenance specialists who work at its Walter M. Higgins Power Plant in Primm, Nevada. The Regional Director issued a Decision and Order Clarifying Bargaining Unit on March 12, 2009, granting the Petitioner's petition for unit clarification with respect to the Higgins plant operators and maintenance specialists, but declining to add the material/warehouse personnel classification to the unit. The Employer filed a request for review, contending that the Regional Director failed to follow the Board's traditional accretion standard, and that under this standard, the Regional Director erred in finding that the Higgins plant operators and maintenance specialists are an accretion to the existing unit. On October 19, 2009, a two-member Board granted the Employer's request for review. A three-member panel affirmed this decision on August 27, 2010.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record,[2] we find, contrary to the Regional Director, that the unit should not be clarified to include the Higgins plant operators and maintenance specialists. Applying the Board's traditional accretion standard, we find that these employees do not share an overwhelming community of interest with the employees in the existing unit. We also find that the Board's preference for systemwide units in the public utility industry does not warrant a different result. Accordingly, we reverse the Regional Director's decision and dismiss the underlying petition.

[1] The Petitioner also filed a request for review of the Regional Director's finding that the existing unit should not be clarified to include the Higgins plant's material/warehouse personnel classification. The two-member Board denied the Petitioner's request for review, and the three-member panel affirmed this decision as well.

[2] The parties have not filed briefs on review.

Facts

The facts are more fully set forth in the Regional Director's decision (pertinent portions of which are attached as an appendix). The Employer, a public utility company with its principal place of business in Las Vegas, is engaged in the generation, transmission, and distribution of electricity to customers throughout Nevada and California. The Petitioner represents a unit consisting of about 1950 employees in the Employer's southern division, including control operators and maintenance technicians at the Reid Gardner, Harry Allen, Silverhawk, Chuck Lenzie, Sunrise, and Clark generating plants.[3] In October 2008, the Employer acquired the Higgins plant, which is also located within the geographic parameters of the Employer's southern division. The seven generating plants in the southern division are scattered throughout Clark County; the Clark plant—the generating facility closest to the Higgins plant—is about 45 miles from the Higgins plant.

At the six generating plants undisputedly within the existing unit, control operators operate the equipment used to generate electricity, and maintenance technicians maintain the operating equipment. The Higgins plant operators and maintenance specialists are, in terms of skills and functions, equivalent to control operators and maintenance technicians. The Higgins plant operators and maintenance specialists do, however, have some additional responsibilities, as they are expected to set work priorities and make work assignments. The Higgins plant operators report to onsite Operations Manager Felix Fuentes, and the Higgins plant maintenance specialists report to onsite Maintenance Manager Ron McCallum. Fuentes and McCallum are responsible for the day-to-day supervision of the plant operators and maintenance specialists.[4] McCallum and Fuentes both report to Interim Plant Director Steven Page, who is not based at the Higgins facility, and whose position also covers the Clark and Sunrise plants.[5] Page did not testi-

[3] IBEW Local 1245 represents a unit of employees in the Employer's northern division.

[4] Neither the parties nor the Regional Director addressed the question of whether Fuentes or McCallum are statutory supervisors. It is clear from the record that they both responsibly direct the work of their subordinates and have at least some disciplinary authority; further, it appears that Fuentes has hired employees, including one since the Employer acquired the Higgins plant.

[5] The record contains several references to the Clark, Sunrise, and Higgins plants constituting the "Clark region." Page is also the Clark plant's operations manager. There is a separate plant director for the Reid Gardner Plant. Tom Price is the plant director for the Silverhawk and Chuck Lenzie plants; Price and Brian Paetzold share responsibilities for the Harry Allen plant, although Paetzold reports through Price. All plant directors report to Kevin Geraghty, vice president of power generation.

fy, but various witnesses, including Tom Price, who preceded Page as the interim Higgins plant director, testified that the interim plant director does not have day-to-day responsibility for the Higgins plant. Instead, according to Price, the interim plant director is a liaison between the plant and the Employer's corporate offices, and is largely concerned with controlling the budget.[6] According to Fuentes, he regularly briefs Page on the status of the Higgins plant, but Page is not involved in its day-to-day operation. And the Higgins plant employees who testified all stated that either Fuentes or McCallum was their day-to-day supervisor and that they did not have significant contact with Page.

Prior to its acquisition by the Employer, the Higgins plant was owned by Reliant Energy Services (Reliant). It appears that the Higgins plant has always been connected to the same power grid as the Employer's other generating plants. Due to fluctuations in demand, the Higgins plant was inoperative from November 2007 through July 2008. The Employer took possession of the plant on October 21, 2008, and shortly thereafter shut it down for inspection and other necessary work. The plant resumed operation in January 2009. Upon acquiring the plant, the Employer interviewed and hired all of the former Reliant employees, with the exception of two managers. Since then, the Employer has integrated the Higgins plant into its communications system, and the Higgins plant employees have been added to its payroll and leave systems. The Higgins plant employees have been assigned a human resources representative, who is also responsible for at least the Clark and Silverhawk plants. The Higgins plant employees are also now covered by the Employer's companywide safety manual, and share a safety representative with the Clark and Sunrise plants. The Higgins plant employees who testified all stated that their functions and duties were unchanged by the Employer's acquisition of the plant.

There is no evidence that bargaining unit employees have had any temporary or permanent interchange with the Higgins plant employees. Similarly, there has been little physical contact between the Higgins plant employees and bargaining unit employees. On two occasions, the Higgins plant employees have gone to other plants to borrow equipment, and on another occasion, several Higgins plant employees attended a safety meeting with several Clark plant employees. Additionally, at least one Higgins plant operator participates in a daily morning conference call that includes control operators from other generating plants and other personnel. These conference calls last 15–30 minutes. According to Higgins plant operator Jose Otero, he usually talks for about 10 seconds of this time. The conference calls primarily provide an opportunity for the involved personnel to note problems their facilities are experiencing that might affect their generating capacity. No attempt is made to find solutions to these problems during the conference calls, however. Rather, it appears the calls are designed to help assess the generating demands that may be placed on the individual generating facilities that day.

By contrast, there is some evidence indicating interchange and common supervision among the other six plants. For example, there are instances in which control operators from the Chuck Lenzie plant have covered for the Silverhawk plant control operators. A witness indicated that beyond this, there is "a little bit" of interchange among the Silverhawk, Chuck Lenzie, and Harry Allen plant employees. At least one unit employee testified that he was permanently transferred from the Reid Gardner plant to the Silverhawk plant (following an application and interview process), another testified that he was transferred from the Reid Gardner plant to the Clark plant, and the record reveals that about 3 years before the hearing certain other employees were transferred from the Clark plant to the Reid Gardner plant. In addition, testimony indicates that the Harry Allen, Chuck Lenzie, and Silverhawk plants are treated as a single facility, with common supervisors and managers; the same is true of the Clark and Sunrise plants.

Under Reliant, the Higgins plant employees were unrepresented. Prior to acquiring the Higgins plant, the Employer also acquired the Chuck Lenzie and Silverhawk plants. The Employer acquired the Chuck Lenzie plant as a newly constructed facility and staffed it with employees represented by the Petitioner. The Employer purchased the Silverhawk plant from Arizona Public Service, another utility company. A different IBEW local represented the Silverhawk plant employees at the time of the purchase, and that local, the Petitioner, the Employer, and Arizona Public Service agreed that the Petitioner would assume representation of the Silverhawk plant employees. The Higgins plant acquisition is the only example of the Employer acquiring an operating facility staffed by unrepresented employees. Shortly after the Employer acquired the Higgins plant, representatives of the Petitioner contacted at least some of the Higgins plant employees about signing dues-checkoff authorization forms; it appears that two Higgins plant employees signed them.[7]

[6] The Higgins plant has its own budget.

[7] The Regional Director found that the employees signed "union authorization cards," but it does not appear that the Petitioner was attempting to organize the Higgins plant employees; rather, the Petitioner seems to have approached the employees with dues-checkoff forms on

When the Employer hired the Higgins plant employees, it classified them as MPAT (management/professional/administrative/technical), a classification the Employer uses for certain of its unrepresented employees, and extended the MPAT wage system and benefits package to the Higgins plant employees. Although there appear to be slight differences between MPAT and bargaining unit wages and benefits,[8] it nevertheless appears that they are generally similar; in fact, the Employer's purchase agreement requires that the Higgins plant employees receive pay and benefits substantially similar to bargaining unit employees. It is not clear whether the Higgins plant employees' current wages and benefits substantially differ from what they received under Reliant.

The Regional Director's Decision

Citing *E. I. Du Pont de Nemours, Inc.,* 341 NLRB 607 (2004), and *Frontier Telephone of Rochester, Inc.,* 344 NLRB 1270 (2005), enfd. 181 Fed. Appx. 85 (2d Cir. 2006), the Regional Director began his analysis by noting that the Board permits accretion only when the employees a party seeks to add to the existing bargaining unit have little or no separate identity and where the two groups share an overwhelming community of interest. The Regional Director acknowledged that in determining whether this standard has been met, the two "critical" factors are employee interchange and common day-to-day supervision. The Regional Director then found that there is no evidence of temporary or permanent interchange between the Higgins plant employees and bargaining unit employees. Regarding day-to-day supervision, the Regional Director seemingly found that there was no such supervision common to the Higgins plant employees and the unit employees. He further found that Fuentes and McCallum "report to an acting plant director who serves as acting director for a region that includes the Higgins, Clark, and Sunrise plants."

The Regional Director then stated that "[c]onsideration of these two factors, however, does not end the inquiry" because the Board "has long held that in public utility industries a system-wide unit is optimal." Characterizing the systemwide preference as a "rebuttable presumption," the Regional Director found, based on other community-of-interest factors (integration of operations, centralized management, similar wages and benefits, similarity of skills, and employee contact), that the systemwide preference had not been rebutted. The Regional Director found that there is "little difference" between the Higgins plant employees and bargaining unit employees, and that, accordingly, accretion was appropriate because the Higgins plant employees and bargaining unit employees "share a sufficient community of interest."

In so finding, the Regional Director acknowledged that collective-bargaining history did not support adding the Higgins plant employees to the existing unit. The Regional Director also acknowledged that the Employer's closest generating station—the Clark plant—is 45 miles from the Higgins plant, but considered this factor insignificant "in the setting of a public utility." And the Regional Director noted that it appears that the Higgins plant employees did not support the Petitioner's organizing efforts, but found that the other community-of-interest factors outweighed this consideration.

Analysis

When the Board finds an accretion, it adds employees to an existing bargaining unit without conducting a representation election. The purpose of the accretion doctrine is to "preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations in industrial routine are made." *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985), quoted in *Frontier Telephone of Rochester,* supra at 1271. However, because accreted employees are added to the existing unit without an election or other demonstration of majority support, the accretion doctrine's goal of promoting industrial stability is in tension with employees' Section 7 right to freely choose a bargaining representative. *Frontier Telephone of Rochester,* supra at 1271. The Board accordingly follows a restrictive policy in applying the accretion doctrine. See *CHS, Inc.,* 355 NLRB 914, 916 (2010) (quoting *Archer Daniels Midland Co.,* 333 NLRB 673, 675 (2001)); *Super Valu Stores,* 283 NLRB 134, 136 (1987). Under the well-established accretion standard set forth in *Safeway Stores, Inc.,* 256 NLRB 918, 918 (1981), the Board finds "a valid accretion only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted." Id. (footnotes omitted). See also *Frontier Telephone of Rochester,* supra at 1271; *E. I. Du Pont,* supra at 608 (quoting *Ready Mix USA, Inc.,* 340 NLRB 946, 954 (2003)). In determining whether this standard has been met, the Board considers factors including integration of operations, centralization of management and administra-

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the belief that, by virtue of accretion, it now represented the Higgins plant employees.

[8] For example, MPAT employees receive raises based on demonstrated skill proficiencies and have vacation scheduled by seniority; bargaining unit employees receive raises based on length of service and have their vacation scheduled on a first-come, first-served basis.

tive control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, degree of separate daily supervision, and degree of employee interchange. *Archer Daniels Midland,* supra at 675 (citing *Progressive Service Die Co.,* 323 NLRB 183 (1997)).[9] However, the Board has held that the "two most important factors—indeed, the two factors that have been identified as critical to an accretion finding—are employee interchange and common day-to-day supervision," and therefore "the absence of these two factors will ordinarily defeat a claim of lawful accretion." *Frontier Telephone of Rochester,* supra at 1271 and fn. 7 (internal quotations omitted).[10]

Although the Regional Director set forth the applicable standard, he did not apply it here. In finding accretion appropriate, he did not find that the Higgins plant employees have little or no separate identity from the bargaining unit employees or that the two groups share an overwhelming community of interest. Instead, the Regional Director found that the Higgins plant and bargaining unit employees share a "sufficient community of interest." Applying the correct standard, we find that the two groups do not share an overwhelming community of interest and that the Higgins plant employees have retained a separate identity from the bargaining unit employees.

As is usually the case,[11] there are some factors that support accretion to the existing unit. We agree with the Regional Director that integration of operations, the similarity of terms and conditions of employment,[12] centralized control of management and labor relations, and similarity of skills all favor finding an accretion. Contrary to the Regional Director, however, we find that these factors are clearly outweighed by factors that disfavor accretion. Crucially, it is undisputed that there has been neither permanent nor temporary interchange between the Higgins plant employees and the bargaining unit employees. This is in contrast to the other six facilities where there has been some, albeit limited and irregular, temporary and permanent interchange. Similarly, there is no common day-to-day supervision. The Regional Director's findings regarding common day-to-day supervision are somewhat unclear, but he acknowledged that Fuentes and McCallum, who oversee the plant operators and maintenance specialists at the Higgins plant, have no authority over any unit employees. Similarly, there is no evidence that any individuals with day-to-day authority over unit employees have such authority over the Higgins plant employees. Although the Regional Director noted that Fuentes and McCallum report to Interim Plant Director Page, who is also the acting director for the "region" comprised of the Higgins, Clark, and Sunrise plants, the record fails to establish that Page (or any previous acting plant director) exercises day-to-day authority over the contested Higgins employees. Indeed, the Higgins plant employees who testified stated that either Fuentes or McCallum was their day-to-day supervisor and denied having any significant contact with Page. Further, former Interim Plant Director Price denied that he had any day-to-day responsibility when in that position, but instead characterized his role as a liaison between the Higgins plant and the Employer's corporate wing who primarily dealt with budget control.[13] Under these circumstances, we find that there is no shared day-to-day supervision between the Higgins plant employees and bargaining unit employees. Together, the absence of these two critical factors prevents us from finding an overwhelming community of interest here.

Further, we disagree with the Regional Director's finding that contact between the Higgins plant and unit employees favors accretion. As noted above, the record contains three isolated instances of physical contact between the two groups of employees. Such incidental and irregular physical contact does not support accretion. Further, although at least some Higgins plant operators participate in daily morning conference calls, it is not clear how many plant operators are involved in these calls, and the maintenance specialists apparently do not participate. Moreover, these calls are apparently designed to simply advise relevant personnel of situations that might affect that day's generation demands. The calls last only 15–30 minutes, and the only detailed tes-

[9] Regarding the factor of employee interchange, the Board distinguishes between two types—temporary transfers and permanent transfers—and regards temporary transfers to be more important when analyzing whether accretion is appropriate. *Frontier Telephone*, supra at 1272; *Red Lobster*, 300 NLRB 908, 910 (1990).

[10] *Frontier Telephone* dealt with accretion in an unfair labor practice setting, hence the reference to a "lawful" accretion. The same analysis, however, applies to alleged accretions in unit clarification proceedings.

[11] See *Great Atlantic & Pacific Tea Co.,* 140 NLRB 1011, 1021 (1963) ("[T]he normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary.").

[12] The Employer argues that the Higgins plant employees have different wages and benefits from the unit employees. Although there are some minor differences, the purchase agreement between Reliant and the Employer for the Higgins plant required the Employer to provide the Higgins plant employees with pay and benefits substantially similar to those of unit employees.

[13] As with interchange, there is also evidence suggesting that there is some common day-to-day supervision among the other six facilities. Although it does not appear that all six facilities share common supervision, the Silverhawk, Harry Allen, and Chuck Lenzie plants do; the same is true of the Clark and Sunrise plants.

timony about them indicates that the Higgins plant operators talk for only a few seconds. Accordingly, we do not view this degree of contact as significant or favoring accretion, particularly in the absence of the two "critical" factors.

Three final factors do not favor an accretion finding. First, as the Regional Director noted, there is no history of collective bargaining at the Higgins plant, and thus collective-bargaining history does not favor accretion. Although the Employer has acquired at least two plants in the past where the employees are now part of the bargaining unit, one (Chuck Lenzie) was acquired before it was actually staffed, and the employees at the other (Silverhawk) were represented by another IBEW local when the Employer acquired the plant.[14] There are no prior examples of the Employer acquiring an already-staffed nonunion facility and agreeing to include those employees in the existing unit. Second, although it is clear that the Higgins plant employees have similar skills and perform similar functions as comparable unit employees, it is undisputed that the Higgins plant employees have at least some additional duties and work under slightly different expectations, as they set work priorities and make assignments in ways that unit employees do not. Finally, the closest generating facility to the Higgins plant is the Clark plant, which is about 45 miles away. The Regional Director found that because the Employer is a public utility, this distance is not a significant factor, especially as Page is the acting plant director for the Higgins plant yet is based at the Clark plant. We do not agree that Page's position offsets the distance between the two plants. Although Page has some authority over the Higgins plant, he is not based there, he is not engaged in day-to-day supervision there, and it is not even clear how often he is physically present there. Further, the Employer may be a public utility, but the Regional Director cited no precedent and offered no explanation why this should make a difference in assessing the Higgins plant's geographical proximity to unit employees. The Board has previously found distances of less than 45 miles between facilities to disfavor accretion. See, e.g., *Mercy Health Services,* 311 NLRB 367, 368 (1993) (40 miles); *Super Valu Stores,* supra at 136 (10–12 miles); *Bryan Infants Wear Co.,* 235 NLRB 1305, 1306 (1978) (12 miles). Accordingly, we find that in this case, the fact that the Higgins plant is 45 miles from the closest plant with unit employees does not favor accretion.

[14] The appropriateness of the accretion of employees at the Chuck Lenzie and Silverhawk facilities into the bargaining unit is not before us.

Based on the foregoing factors, we find that the facts of this case do not meet the Board's restrictive standard for accretion, particularly given the absence of the two "critical" factors, which "ordinarily" defeats an accretion claim. *Frontier Telephone of Rochester,* supra at 1271 fn. 7. Thus, the Petitioner has not shown that the Higgins plant employees share an overwhelming community of interest with the unit employees, nor has the Petitioner shown that the Higgins plant employees have little or no separate group identity.

The Regional Director's accretion finding, however, was largely premised on his invocation of the Board's preference for systemwide units in the public utility industry. The Board has long held that for public utilities, "a systemwide unit is the optimal appropriate unit." *Baltimore Gas & Electric Co.,* 206 NLRB 199, 201 (1973). The Board has also stated that it will deviate from this preference where "compelling" evidence shows collective bargaining in a less-than-systemwide unit is a "feasible undertaking," namely where:

> (1) employees in the petitioned-for smaller unit share a substantial community of interest, (2) the boundaries of the requested unit conform to a well-defined administrative segment and could be established without due disturbance to the company's ability to perform its necessary functions, and (3) there is no opposing bargaining history on a broader basis.

Alyeska Pipeline Service Co., 348 NLRB 808, 809–810 (2006) (citations omitted). At the same time, the Board has specified that the systemwide preference

> makes the most sense when the petitioned-for employees are an integral part of the provision of the utility service such that a labor stoppage or dispute at one part threatens the ability of the whole to serve the public good. . . . [W]here there is no such danger, we find no basis for limiting the organizational rights of employees by requiring them to organize only in comprehensive units.

Verizon Wireless, 341 NLRB 483, 484 (2004).

As noted above, the Regional Director characterized the systemwide preference as a rebuttable presumption and found, based on several community-of-interest factors, that the Employer had not rebutted the preference and that accretion was therefore appropriate. But as set forth above, the Regional Director should have recognized—and his analysis suggests that he did in fact recognize—that in this case, an accretion finding is not warranted under the traditional accretion analysis. Thus, the Regional Director's analysis at least implicitly assumes

that in a case involving a public utility, the systemwide preference takes precedence over traditional accretion analysis where the two doctrines are in tension, or that the systemwide preference can offset the absence of the two "critical" accretion factors. While we recognize that the systemwide presumption and the Board's traditional accretion analysis are in tension, at least in cases like this one, we hold, contrary to the Regional Director, that in this context the systemwide preference is not dispositive.

To begin, the accretion doctrine is rooted in the Act's purpose of promoting industrial stability. When the Board finds an accretion, however, employees are added to a unit without exercising their statutory right to select or reject a collective-bargaining representative. The Board has carefully balanced these competing interests by applying the accretion doctrine restrictively. See *Super Valu Stores,* supra at 136. This restrictive application is expressed in terms of the required "overwhelming community of interest" showing. See *Safeway Stores*, supra at 918. The fact that a unit clarification petition involves the public utility industry does not alter this balance. The Board has applied the traditional accretion analysis in cases involving public utilities. See, e.g., *Indiana Bell Telephone Co.,* 229 NLRB 187 (1977); *Pacific Northwest Bell Telephone Co.,* 207 NLRB 1 (1973).

Applying the systemwide preference in the way the Regional Director did here disrupts this careful balance in at least three ways. First, despite his apparent finding that both of the "critical" accretion factors were absent in this case, the Regional Director nevertheless allowed the systemwide preference to trump the traditional accretion analysis. That is, the Regional Director found that the Higgins plant employees were an accretion to the existing unit despite tacitly acknowledging that the record does not establish the overwhelming community of interest that the traditional accretion analysis requires as a means of protecting employee free choice. Second, and on a closely related note, the Regional Director ultimately found that the Higgins plant employees were an accretion because they shared a "sufficient," rather than overwhelming, community of interest. Finally, the Regional Director's analysis appears to have subtly shifted the burden in this case from the Petitioner to the Employer. Under the "restrictive" accretion policy, the party favoring accretion bears a "heavy" burden of establishing that accretion is appropriate. See, e.g., *Bay Shipbuilding Corp.,* 263 NLRB 1133, 1140 (1982) (quoting *Rice Food Markets,* 255 NLRB 884, 887 (1981)), enfd. 721 F.2d 187 (7th Cir. 1983). Here, that party is the Petitioner. But as the systemwide preference has been described as a "rebuttable presumption," see *Alyeska Pipeline,* supra at 809, it follows that the burden to rebut the presumption is on a party that seeks to deviate from the systemwide unit. Here, that is the Employer. Thus, combining the two standards in the way the Regional Director did at least implicitly excused the Petitioner from establishing that accretion is appropriate and instead required the Employer to rebut the systemwide preference. The accretion doctrine's burden allocation, however, is part of the "restrictive" policy that seeks to protect employee free choice, so requiring a party *opposed* to accretion to make a showing in order to *prevent* an accretion finding does not sufficiently protect this choice.

Given these considerations, we hold that in unit clarification proceedings that involve public utilities, the systemwide preference is not dispositive. It does not ipso facto establish the requisite overwhelming community of interest between existing unit employees and the employees sought to be accreted. Rather, we find that to the extent the systemwide preference is relevant in unit clarification cases, it is merely one more factor to consider in the traditional accretion analysis. Further, inherent in the systemwide preference is the balancing of employees' Section 7 rights against other interests. See *Alyeska Pipeline*, supra at 809. Thus, this factor cannot dictate a different result where the "critical" accretion factors are lacking, lest the accretion doctrine's own careful balancing of industrial stability and employee free choice be disrupted. Thus, even assuming that the systemwide preference favors accretion in this case, the traditional factors disfavoring accretion are paramount; indeed, as is ordinarily the case, the absence of the two "critical" factors defeats the Petitioner's accretion claim here.

The cases that the Regional Director cited do not suggest a different result because all of those cases involved initial representation proceedings, not unit clarification proceedings. See *Alyeska Pipeline,* supra; *New England Telephone Co.,* 280 NLRB 162 (1986); *TRT Telecommunications Corp.,* 230 NLRB 139 (1977); *Baltimore Gas & Electric,* supra; *Gulf States Telephone Co.,* 118 NLRB 1039 (1957); *New England Telephone & Telegraph Co.,* 90 NLRB 639 (1950). Thus, in each of those cases, the application of the systemwide preference merely determined whether certain employees would vote in a subsequent election. Here, by contrast, if the Higgins plant employees are added to the existing unit by virtue of the systemwide preference, they will have had no opportunity to express their representational desires. Accordingly, these cases provide no basis for allowing the systemwide preference to modify the traditional accretion analysis.

Our treatment of the systemwide preference is also consistent with past precedent. There do not appear to be any prior cases in which the accretion analysis and

systemwide preference suggested different results, and there are no cases in which the Board has found that the systemwide presumption trumped or modified the usual accretion analysis. In the one case in which the Board applied the systemwide preference in an accretion context, the accretion analysis and systemwide preference analysis both supported finding that certain employees were an accretion to the existing unit. See *Arizona Public Service Co.,* 256 NLRB 400, 401–402 (1981), enfd. 698 F.2d 1228 (9th Cir. 1983), cert. denied 464 U.S. 1043 (1984).[15] Further, there are a number of public utility cases involving accretion issues in which the Board engaged in the usual accretion analysis without any mention of the systemwide preference. See, e.g., *Indiana Bell Telephone,* supra; *Pacific Northwest Bell Telephone,* supra; *Gas Service Co.,* 140 NLRB 445 (1963).[16] Finally, there are at least two public utility accretion cases in which the Board mentioned the systemwide preference but nevertheless declined to accrete newly acquired employees. *Consolidated Edison of New York, Inc.,* 132 NLRB 1518, 1521 (1961) (in refusing to accrete utility plant employees at newly acquired facilities to existing unit, the Board stated that although it "favors the systemwide unit as the optimum unit for public utilities, . . . the application of such policy is tempered by the rights of employees to a self-determination election before being merged in a larger unit" (footnote omitted)); *Illinois Bell Telephone Co.,* 222 NLRB 485, 486 (1976) (Board refused to accrete public utility employees to existing unit, despite systemwide preference, because the employees had a "sufficiently distinct identity"). Thus, while the Board has acknowledged the systemwide preference in past accretion cases, it has *relied* on the traditional accretion factors in making its determinations.

In sum, considering the accretion factors outlined above, we conclude that the Higgins plant employees are a sufficiently distinct, readily identifiable group with no overwhelming community of interest with bargaining unit employees. We therefore decline to accrete them to the existing unit. To the extent that the systemwide preference suggests otherwise, we find that the traditional accretion factors control the outcome of this case.[17]

ORDER

The Regional Director's Decision and Order Clarifying Bargaining Unit is reversed and the petition is dismissed.

Dated, Washington, D.C. January 30, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

DECISION AND ORDER CLARIFYING BARGAINING UNIT

The Petitioner, International Brotherhood of Electrical Workers, Local 396, AFL–CIO (the Petitioner), seeks to clarify its contractual bargaining unit (the unit) of approximately 1950 employees of NV Energy, Inc. (the Employer) made up of employees involved in the generation, distribution, and transmission of electric power in the Employer's southern Nevada operations by adding some 14 employees classified as plant operators and maintenance specialists at the Employer's Walter E. Higgins Power Plant (the Higgins Plant) and the job classification of material/warehouse personnel to the unit. The Employer opposes the inclusion of these employees and job classifications in the unit on the grounds that the Higgins Plant is a stand-alone generating station whose employees are separate and apart from the unit and do not meet the community-of-interest standard for accretion. For the reasons more fully set forth in this decision, I shall clarify the unit to include classifications of plant operator and maintenance specialist at the Higgins Plant because the Employer has integrated the Higgins Plant into its overall operations in southern Nevada, and the Higgins Plant employees share a sufficient community of interest with the unit employees to be accreted into the unit.

[15] Arizona Public Service is further distinguishable from this case because there, the accretion of employees at a newly opened generating plant was supported by the employer and union's historical bargaining practice, and there was at least some evidence of employee interchange. See id. at 401–402 (approximately 20 percent of employees at the accreted facility transferred there from bargaining unit positions).

[16] In *U.S. West Communications,* 310 NLRB 854, 855 (1993), the Regional Director noted the systemwide preference and also found that accretion was appropriate, but it is not clear whether the Regional Director in fact applied the systemwide preference in reaching his accretion finding.

[17] The Employer has invited us to overrule the systemwide preference, arguing that the assumptions underlying it are outdated. In view of our foregoing analysis, it is unnecessary to consider this argument here.

DECISION

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board). Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at hearing are free from prejudicial error and are affirmed.[1]

2. **Jurisdiction:** The parties stipulated, and I find, that the Employer, NV Energy, Inc., a Nevada corporation, with its principal office and place of business in Las Vegas, Nevada, is a public utility engaged in generating, transmitting, and distributing electrical power to commercial and residential customers in the State of Nevada. During the 12-month period ending January 26, 2009, the Employer, in conducting the business operations described above, derived gross revenues in excess of $1 million. During the same period, the Employer purchased and received at its Nevada facilities goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Nevada. Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, therefore, asserting jurisdiction over the Employer in this matter will accomplish the purposes of the Act.

3. **Labor Organization Status and Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. By its petition, the Petitioner seeks to add to the parties' existing unit approximately 14 employees employed by the Employer at the Higgins Plant. There are approximately 1950 employees in the unit.

In this Decision, I shall discuss the record facts concerning the Employer's operations, management hierarchy, and structure; its acquisition and integration of the Higgins Plant; and the composition of the unit. I will then discuss the record facts relating to community of interest between the unit and the Higgins Plant employees and analyze those facts under the Board's applicable case law.

A. The Employer's Operations

The Employer is a public utility that generates its own electricity and acquires electricity from other sources, which it then transmits and moves to customers within the State of Nevada and a small portion of California near Reno and Carson City, Nevada. It employs some 3250 employees throughout Nevada, who are grouped into two bargaining units located in the northern and southern parts of the State. It owns and operates 10 electricity generating stations throughout Nevada and has an ownership interest in two coal-fired generating stations: the Navajo station located in Page, Arizona, and the Mojave station located in Laughlin, Nevada. The Mojave station is not currently operating. Of the 10 generating stations that it owns and operates, eight are gas-fired plants and two are coal-fired. Seven of these generating stations or plants are located in Clark County, Nevada, and are named as follows: Reid Gardner, Harry Allen, Silverhawk, Chuck Lenzie, Sunrise, Clark, and Higgins, the generating plant at issue in this proceeding.

The Employer's generating stations are scattered throughout Clark County. For example, the Reid Gardner Plant is located in the Moapa Valley about 70 miles north of Las Vegas. The Higgins Plant is located about 28 miles southwest of Las Vegas near the California-Nevada border. The nearest generating station to the Higgins Plant is the Clark Plant, which is located about 45 miles northeast of the Higgins Plant.

The Employer operates substations attached to its generating stations. A fence separates substations from generating stations. The electricity generated at generating stations must pass through a switchyard and a substation before it enters the "grid" or network of substations and lines for transmission and distribution. The Employer also operates substations next to generating stations that it does not own. There are at least 29 generating units in southern Nevada that the Employer does not own or operate. Before it acquired the Higgins Plant, the Employer operated a substation known as Bighorn at that location. It continues to operate the Bighorn substation that receives electricity from the Higgins Plant, which feeds 230,000 volts on two transmission lines to the Arden substation for further transmission and distribution. While these substations and transmission lines do not contain facilities where employees regularly report to work, their operations require occasional visits by unit employees who perform work at or near substations and transmission lines.

At its generating stations, the Employer employs control operators who operate the controls of equipment used to generate electricity; maintenance technicians who maintain the operating equipment; and material specialists who receive, store, and issue tools, supplies, and equipment. As they generate electricity, control operators interact and communicate with the Employer's generation dispatchers, who work away from the generating stations. The Employer utilizes three types of dispatchers to manage its generation and transmission of electricity: the generation dispatcher, who is responsible for all generation of electricity at the generating stations; the balancing authority operator, who is responsible for the interchange of electricity, that is, what electricity is purchased and sold by the Employer; and the transmission operator, who is responsible for the operation of substations and transmission lines and the monitoring and maintenance of transmission voltage levels. If generation from one station is lost, the generation dispatcher will seek to make up the loss through other generating stations. If that is not possible, the generation dispatcher will tell the marketer or power trader to purchase electricity from an outside source.

[1] On February 24, 2009, pursuant to the Employer's request for an extension of time, the Regional Director ordered that briefs be filed with the Regional office by March 6, 2009. On March 9, 2009, the Employer moved to strike the Petitioner's posthearing brief because the copy served upon the Employer via certified mail reflected that it was placed in the mail on March 6, 2009, and because it does not contain any citations to the record. The Petitioner's posthearing brief was hand-delivered to the Resident Office in Las Vegas, Nevada, on March 6, 2009. I consider the Petitioner's posthearing brief to be timely filed and sufficient in form, and I hereby deny the Employer's motion to strike.

The transmission operator controls electricity generated from the Employer's own stations and those stations that the Employer does not own and communicates with both types of stations concerning electricity generation.

The Federal Energy Regulatory Commission, the National Electric Reliability Council, the Western Electric Coordinating Council, and the Rocky Mountain Desert Southwest Reliability Coordinator are among the regulatory agencies and organizations that set restrictions, standards, and guidelines for the Employer and all companies that generate and transmit electricity. Restrictions include the open access of nonutilities to both the generation and transmission of electricity, the functional separation of energy generation from energy transmission, and the providing of transmission information to other generators and market participants. Guidelines cover such operations as reliability and outages. Reliability standards permit the Employer's balancing operators to direct generating stations owned by the Employer and other generators to raise or lower the output of electricity produced and maintain voltage on the grid within certain levels. Outages by the Employer must be coordinated with transmission operators and balancing authorities of other generators to ensure that there is adequate electricity available from all sources.

B. Management Hierarchy

Michael Yackira is the president and chief executive officer of the Employer. Robert Denis is the senior vice president, Energy Supply. He is responsible for contracts the Employer develops to purchase electricity from outside sources and to sell electricity to outside sources. He is also responsible for natural gas procurement to power the Employer's gas-fired generating plants and for new generation construction. Reporting to Denis is Kevin Geraghty, vice president, Power Generation, who is responsible for the generation of electricity within the Employer. The rest of the Employer's generation team is located in Las Vegas.

Reporting to Geraghty are plant directors, including Tom Price, who oversees the Harry Allen, Silverhawk, and Chuck Lenzie Plants. Price also served as the interim plant director for the Higgins Plant during the ownership transition from Reliant to the Employer, which is described more fully in the following section. Brian Paetzold is the plant director for the Harry Allen Plant, reporting through Tom Price based on some shared responsibilities. David Sharp is the plant director for the Reid Gardner Plant. Steven Page is the operations manager for the Clark Plant and the acting director for the Clark region that includes the Clark, Sunrise, and Higgins Plants. Reporting to Steven Page at the Higgins Plant are Felix Fuentes, operations manager, and Ron McCallum, maintenance manager.

C. Acquisition of the Higgins Plant

Reliant Energy Services, Inc. (Reliant) operated what it called the Bighorn Power Plant from November 2002, until it was purchased by the Employer in 2008, and renamed the Walter E. Higgins Power Plant. According to the Employer, it acquired this generating station to cover its peak load or demand for electricity. Demand for electricity varies from a low in the winter to peak demand during the summer months. In the year period before Reliant turned the plant over to the Employer on October 21, 2008, Reliant shut down the plant in November 2007, and brought it back to generate electricity during July 2008. It continued to generate electricity until shortly after the Employer assumed possession on October 21. As the Employer's interim plant director, Tom Price made sure that the Employer acquired all items sold by Reliant, from the turbines to cell phones and computers, and assisted in scheduling an outage for the plant shortly after acquisition because the generating equipment had enough usage time that an outage and inspection were due. Thereafter, the Employer conducted inspections and other work necessary to begin operating the plant. The Employer re-energized the Higgins Plant and began generating electricity during early January 2009. Dariusz Rekowski, the Employer's director of outages and work management, became interim director for the Higgins Plant once the generating units were operating reliably. Steven Page now serves as interim plant director of the Higgins Plant.

D. Operation of the Higgins Plant

The Higgins Plant generates electricity through equipment identical to that used by the Silverhawk Plant, except for a different manufacturer of the steam turbines. Although this equipment is the same, the Higgins Plant operates its generation equipment with two operators, as opposed to the three operators the Silverhawk Plant utilizes. At the Higgins Plant, the electricity generated feeds into step-up transformers that increase the voltage to 230,000 volts before its passes from the plant. There is also a step-down unit that reduces voltage to levels that operate the plant's equipment. According to the Employer, the Higgins Plant represented a classic independent power producer with respect to its staffing levels. Thus, it was generally lighter staffed with more sharing of duties and more responsibilities for staff members. In this regard, the job descriptions for maintenance specialists and senior power plant operators at the Higgins Plant list the ability to determine work priorities and assign work to employees under job qualifications. According to a Higgins' plant maintenance specialist, he seeks agreement by other maintenance specialists for about a third of the team's priorities.

The Employer, through its human resources department, interviewed and hired all the former Reliant employees except for two managers. Currently, there are nine plant operators who report to Operations Manager Felix Fuentes and five maintenance specialists reporting to Maintenance Manager Ron McCallum. The Employer utilizes Daniel Torres, an employee of an outside contractor, as a warehouse employee. There is a limit for length of use of such employees based on either total hours worked or months worked.

E. Integration of the Higgins Plant

Upon the acquisition of the Higgins Plant, the Employer has integrated, or is in the process of integrating, the computers and telephones at the Higgins Plant into the Employer's communication system. With the agreement of the Petitioner, it temporarily assigned a unit employee to implement the Employer's "Passport" system at the Higgins Plant. Passport is a means to identify and request parts and materials. Since the acquisition,

the Clark Plant obtained a vibration probe from the Higgins Plant for use in monitoring the amount of vibration when turbines are spinning. Also, after the acquisition, the Higgins Plant obtained a power panel from the Silverhawk Plant for use during the Higgins Plant outage. The Higgins Plant has since returned the panel to Silverhawk.

Former Reliant employees at the Higgins Plant attended employee orientation conducted by the Employer at its Pearson administrative and headquarters office building in Las Vegas. The Employer also issued the Higgins Plant employees identification numbers and cards, email addresses, and human resources partners; classified the Higgins Plant employees as MPAT, Management/Professional/Administrative/Technical; placed the Higgins Plant employees under the Employer's payroll and leave system; and assigned a human resources representative to the Higgins Plant employees. The Employer's safety representative, Christine Henshaw, serves both the Higgins and Clark Plants. The Employer applies its safety work practice manual to the Higgins Plant and its employees.

The Employer made no change in the operations or maintenance activities of the Higgins Plant employees. There is no evidence that any employees at the Employer's other plants have substituted for the Higgins Plant employees. With respect to the absence of employees due to sickness or vacations, the Higgins Plant employees cover their own absences and vacations. The Employer has not utilized employees from other plants to cover these absences and vacations.

F. The Unit

The Petitioner has represented the unit employed by the Employer and its predecessor in its southern Nevada operations for more than 25 years. Another local of the International Brotherhood of Electrical Workers represents employees involved in generation, transmission, clerical work, and other duties in the Employer's northern Nevada operations. The current collective-bargaining agreement between the Petitioner and the Employer is effective from February 1, 2008, to February 1, 2011, and covers employees employed in Clark and Nye Counties, Nevada, in the following classifications: Customer Service, Districts, Material/Warehousing, Reprographic Services, Mail Room/Receiving Departments, Line, Fleet Services, Meter Services, Communications, Materials, Generation, Substations, and Survey Organizations. The collective-bargaining agreement contains a separate section for g eneration that includes descriptions for 30 job classifications and wage rates for 31 job codes and titles. It also contains a letter of agreement between the parties for the Chuck Lenzie Plant with four additional job classifications and wage rates. These four job classifications represented a merger of positions to cover operations and maintenance. Generally, these generation job classifications cover operations and maintenance, although the parties entered into an agreement on July 13, 2005, to create a warehouse technician position for generating facilities.

G. Bargaining History for the Generating Stations

Before it acquired the Higgins Plant, the Employer acquired two other generating stations, the Chuck Lenzie and Silverhawk Plants. The Employer purchased the Chuck Lenzie Plant as a newly-constructed facility and staffed it with employees represented by the Petitioner. This staffing resulted in the letter of agreement between the parties, described above, which was entered into by the parties before the Chuck Lenzie Plant became operational. The Employer acquired the Silverhawk Plant as an operating facility from Arizona Public Service (APS). Another local of International Brotherhood of Electrical Workers from Phoenix, Arizona, represented the Silverhawk Plant employees. The acquisition agreement between the Employer, APS, the Petitioner, and the Phoenix local provided that the Petitioner would assume the representation of these Silverhawk Plant employees.

The Petitioner submitted into evidence a letter, sent to the Employer and dated April 25, 2008, in which it claimed that the Employer agreed to voluntarily recognize the Petitioner as the collective-bargaining representative of the Higgins Plant employees. The Employer disputes this claim. By a letter dated October 30, 2008, the Employer informed the Petitioner that it did not recognize the Petitioner as the representative of the Higgins Plant employees. The parties exchanged letters thereafter. On November 21, 2008, the Petitioner filed an unfair labor practice charge in Case 28–CA–22241 with Region 28, alleging a violation of Section 8(a)(1) and (5) of the Act by the Employer's refusal to apply the collective-bargaining agreement to the Higgins Plant employees. This charge is being held in abeyance. The record shows that the Petitioner obtained two signed union authorization cards from the Higgins Plant employees.

H. Wages and Benefits of the Higgins Plant Employees

While the record does not indicate the amount of wages paid to the Higgins Plant employees as compared to generating station employees represented by the Petitioner, the purchase agreement between Reliant and the Employer required that the Employer provide the Higgins Plant employees with ". . . compensation, including base pay and annual incentive compensation opportunity (excluding equity compensation) equivalent to that paid to similarly situated employees of [the Employer]. . . ." The Employer developed a pay system for the Higgins Plant employees and determined to implement an increase in wages for these employees shortly after acquisition. It appears that this wage increase makes the wages of the Higgins Plant employees equivalent to the wages paid to other generating station employees.

With regard to benefits, the purchase agreement between Reliant and the Employer required that the Employer provide the Higgins Plant employees with ". . . benefits (including severance benefits) on a basis substantially similar to those provided to similarly situated employees of [the Employer]." Certain benefit programs available to the Higgins Plant employees are the same as the Employer makes available to its other MPAT employees and to employees represented by the Petitioner, including medical, prescription drug, dental, vision, disability, group life insurance, flexible spending accounts, and wellness benefits. The current collective-bargaining agreement between the parties incorporates what is termed the Employer Comprehensive Welfare Benefit and Cafeteria Plan that includes the above- described programs. It also appears that MPAT em-

ployees, including those at the Higgins Plant, and unit employees are subject to the same "Cash Balance" retirement plan. Holidays for both unit employees and MPAT employees are the same. MPAT employees and one group of employees represented by the Petitioner are under the same paid time off leave system.

I. Contact With the Higgins Plant Employees

Each morning, a plant operator at the Higgins Plant and other plant operators of the Employer report the status of their respective generating stations during a morning conference call that includes gas traders, power traders, and the balancing authority operator. As an example, the gas traders may identify the amount of natural gas available that day, thus limiting the amount of electricity generated by the gas-fired plants.

The record also reflects other instances of contact between the Higgins Plant employees and employees of the Employer's other facilities. For example, after the Employer acquired the Higgins Plant, a Clark Plant material specialist talked to Dan Torres about obtaining a vibration probe from the Higgins Plant. Torres drove the probe over to the Clark Plant. Similarly, a Silverhawk Plant production technician assisted Higgins Plant employee Kevin Newcomb in locating and loading a power panel for use at the Higgins Plant in or about September 2008, before the October 21, 2008 transfer of the Higgins Plant to the Employer. Thereafter, Higgins Plant employees David Cairns and David Rettke returned to the Silverhawk Plant where they were met by a Silverhawk Plant operator who showed them the location of the power panels. Additionally, as was the practice before the acquisition, the Employer's transmission operator spoke to the Higgins Plant operator during the process of re-energizing the Higgins Plant.

J. Accretion Standard

In *E. I. Du Pont de Nemours, Inc.,* 341 NLRB 607 (2004), the Board explained that it permitted accretion "only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." Among the factors the Board considers in assessing community of interest are integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective-bargaining history, the degree of employee interchange, and the degree of separate daily supervision. *E. I. Du Pont,* supra at 608; *Compact Video Services,* 284 NLRB 117, 119 (1987). However, as stated in *E. I. Du Pont,* the "two most important factors"—indeed, the two factors identified as "critical" to an accretion finding—are employee interchange and common day-to-day supervision. *Frontier Telephone of Rochester, Inc*., 344 NLRB 1270, 1271 (2005); *Super Valu Stores,* 283 NLRB 134, 136 (1987), citing *Towne Ford Sales,* 270 NLRB 311, 312 (1984).

Here, there is no evidence that since the acquisition the Employer has interchanged the Higgins Plant employees with employees at its other generating stations on either a temporary or permanent basis. As to daily supervision, the Employer has placed an operations manager over its nine Higgins Plant operators and a maintenance manager over its five maintenance specialists. These managers have no authority over employees at any of the other generating stations. However, both of the Higgins Plant managers report to an acting plant director who serves as acting director for a region that includes the Higgins, Clark, and Sunrise Plants. In addition, the Employer utilized another plant director and its director of outages and work management as interim directors for the Higgins Plant after its acquisition.

K. Systemwide Public Utility Preference

Consideration of these two factors, however, does not end the inquiry. Other community-of-interest factors support accretion here. The Board has long held that in public utility industries a systemwide unit is optimal. *New England Telephone Co.*, 280 NLRB 162 (1986); *New England Telephone & Telegraph Co.*, 90 NLRB 639 (1950); *TRT Telecommunications Corp.*, 230 NLRB 139 (1977). See also *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973); *Gulf States Telephone Co.*, 118 NLRB 1039 (1957). In *Baltimore Gas & Electric*, supra at 201, the Board stated:

> That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations. It has done so only when there was compelling evidence that collective bargaining in a unit less than system-wide in scope was a "feasible undertaking" and there was no opposing bargaining history.

Here, the placement of the Higgins Plant in the Employer's Clark region with Steven Page serving as the acting director for the Higgins, Clark, and Sunrise Plants, and the assignment of Christine Henshaw to serve as the Employer's safety representative for both the Higgins and Clark Plants, suggest that the Employer has not sought to isolate or "fragmentize" the operations of the Higgins Plant. The Board considers its preference for a systemwide public utility unit to be a rebuttable presumption which does not foreclose the possibility of finding a smaller unit to be appropriate. See, e.g., *Alyeska Pipeline Service Co*., 348 NLRB 779, 780 (2006). Considering other community-of-interest factors here, I find that the systemwide public utility presumption has not been rebutted.

L. Community-of-Interest Factors

The community-of-interest factors described above support the accretion and unit clarification sought by the Petitioner. The Employer has integrated the Higgins Plant into its overall operations through its payroll, materials and work orders, safety, and communication systems. Employees at the Higgins Plant carry Employer-issued identification cards, have Employer-issued identification numbers, and appear on the Employer's intranet with their Employer-issued telephone numbers and email addresses. Plant operators at the Higgins Plant participate in daily conference calls with other plant operators and other employees concerning power generation that day.

The Higgins Plant employees also share the same human resource partner with other unit employees, and the Employer utilized its human resource department to interview and hire the former Bighorn Power Plant employees and develop their compensation and benefit packages. As discussed above, the Employer has centralized its management of the Higgins Plant employees through the acting director over the Clark region. This acting director reports to the Employer's vice president over power generation, who manages plant directors for all of the Employer's generation stations.

The Higgins Plant employees enjoy wages and benefits similar, if not identical, to those enjoyed by other generating station employees represented by the Petitioner. Thus, the purchase agreement for the Higgins Plant required the Employer to pay the Higgins Plant employees wages "equivalent" to that paid to similarly situated employees of the Employer. The Employer provided the Petitioner notice when it adjusted the wages of the Higgins Plant employees. Both unit and the Higgins Plant employees are able to participate in the Employer's Comprehensive Welfare Benefit and Cafeteria Plan and its Cash Balance retirement plan. The only difference in benefits appears to be the paid time off system.

The Employer continues to operate the Higgins Plant with two operators while it utilizes three operators for virtually identical generation equipment at the Silverhawk Plant. However, the record establishes that skills of the Higgins Plant employees, both Plant o perators and maintenance specialists, are the same as those at the Employer's other generating stations. There is nothing unique about the generating equipment at the Higgins Plant or the operation and maintenance of such equipment. While the Employer may expect more from the Higgins Plant employees in terms of their ability to set work priorities and assignments, I do not consider this expectation or its exercise by employees so significant as to distinguish the skills of the Higgins Plant employees from other employees in the unit. With regard to physical contact between the Higgins Plant employees and other employees, the record establishes instances of such contact through the trading of equipment and the normal operations of the Employer, including morning conference calls and communications related to outages and other normal operations.

The distance from the Higgins Plant to the nearest generating station, the Clark Plant, is 45 miles. However, in the setting of a public utility, I do not consider this distance a significant factor, especially since the Employer has placed Steven Page, who is located at the Clark Plant, in charge of the Higgins Plant as part of its Clark region.

Concerning the collective-bargaining history, the Petitioner's proffered letter summarizing an alleged conversation with the Employer's representative does not establish that the Employer agreed to include the Higgins Plant employees in the unit, especially where the Employer disputes the Petitioner's version of events. Once the Employer actually acquired the Higgins Plant, it made clear to the Petitioner that it did not recognize it as the bargaining representative for the Higgins Plant employees. Similarly, the Employer's acquisition of other generation stations now included in the unit fails to establish a pattern of conduct that would support including the Higgins Plant employees in the unit. In the case of the Chuck Lenzie Plant, the Employer staffed a newly-constructed generating station with employees represented by the Petitioner. In the case of the Silverhawk Plant, the Petitioner agreed to become the collective-bargaining representative of the Silverhawk Plant employees who had been represented by another local of the International Brotherhood of Electrical Workers. Neither of these actions supports a claim that the Employer should add the Higgins Plant employees to the unit based on collective-bargaining history.

The fact that a majority of the Higgins Plant employees apparently did not support the Petitioner in its organizing efforts does not require a contrary result. The evidence discussed above, including the integration of the Higgins Plant operations into the Employer's overall operations; the assignment of an acting plant director and a safety representative over the Higgins Plant who serve in similar capacities for other plants within the Employer's same geographic region; and the similarity of skills, duties, wages, and fringe benefits between the Higgins Plant employees and other unit employees all support the conclusion that there is there is little difference between the Higgins Plant employees and other generation station employees represented by the Petitioner. In these circumstances, and in light of the Board's preference for finding systemwide public utility units optimal, it is appropriate to accrete the Higgins Plant employees into the existing unit.

M. Material/Warehouse Personnel

The Employer utilizes Daniel Torres as a warehouseman at the Higgins Plant. As described above, Torres is employed by a contractor retained by the Employer. Torres held a similar position employed by a contractor while at the Clark Plant before he moved to the Higgins Plant. While a Clark Plant material specialist described Torres' duties as similar to his own while working at the Clark Plant, there is scant record testimony concerning Torres' duties at the Higgins Plant. Similarly, there is little testimony concerning who supervises Torres at the Higgins Plant, and the interaction between the Employer and its contractor with respect to Torres. In these circumstances, I decline to add Torres or the warehouse classification at the Higgins Plant to the unit.

N. Conclusion

Based on the foregoing and the record in this proceeding, I clarify the unit to include the positions of Higgins Power Plant plant operator and maintenance specialists.